(2)

No. 04-51

IN THE

# Supreme Court of the United States

JOHN HOWARD, *et al.*,

*Petitioners*,

*v.*

SOUTHERN ILLINOIS RIVERBOAT/CASINO CRUISES, INC. d/b/a PLAYERS ISLAND CASINO AND TRIANGLE ENTERPRISES, INC. d/b/a TRIANGLE INSULATION AND SHEET METAL COMPANY,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

The petitioners' statement of the question presented is incorrect.

The question presented by the petition is whether an indefinitely moored floating casino which serves no transportation function is a "vessel in navigation" such that employees of the casino may claim status as seamen within the meaning of the Jones Act, 46 U.S.C. app. § 688 (2000).

## SUPREME COURT RULE 29.6
## DISCLOSURE STATEMENT

Respondent, Southern Illinois Riverboat/Casino Cruises, Inc., d/b/a Players Island Casino, is wholly owned by Players Holding, LLC which is not a publicly traded company.

Respondent, Triangle Enterprises, Inc., d/b/a Triangle Insulation and Sheet Metal Company, has no parent and no publicly held company owning 10% or more of its corporate stock.

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## STATEMENT OF JURISDICTION

The jurisdictional statement of petitioners is correct except for their statement that the United States District Court for the Southern District of Illinois had subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Because petitioners asserted claims under the Jones Act, 46 U.S.C. app. § 688(a) (2000), and the general maritime law, the district court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1333.

## STATUTORY PROVISIONS

The statutory provisions pertinent to this action are set forth in Respondents' Appendix.

## PREFATORY NOTE

### The United States Courts Of Appeal For The Fifth And Seventh Circuits Agree That Indefinitely Moored Riverboat Casinos That Serve No Transportation Function Are Not "Vessels In Navigation"

In *Martin v. Boyd Gaming Corp.*, 374 F.3d 375 (5th Cir. 2004), the United States Court of Appeals for the Fifth Circuit held that a riverboat casino which serves no transportation function and which is securely moored to a dock is not a "vessel in navigation" so as to confer seaman status on any employee of the casino within the meaning of the Jones Act, 46 U.S.C. § 688(a) (2000). The holding of the Fifth Circuit is in complete accord with the ruling of the United States Court of Appeals for the Seventh Circuit in this action. (Pet. App. 1-8) The material facts presented by both cases are indistinguishable. No other United States court of appeals or district court has handed down a contrary ruling on the facts presented here.

## STATEMENT OF THE CASE

### Petitioners' Statement Of The Case Is Incomplete

Petitioners' statement of the case omits undisputed facts which were material to the Seventh Circuit's holding. The following facts are therefore pertinent.

### The Players II Casino Was Indefinitely Moored To Shore As Permitted By The Illinois Riverboat Gambling Act

Commencing in 1995, Southern Illinois Riverboat/ Casino Cruises, Inc. d/b/a Players Island Casino ("Players") operated a gaming casino on Players II, a riverboat casino located on the Ohio River near Metropolis, Illinois. (Pet. App. 2) Initially, gaming casinos in Illinois could only operate on licensed "self-propelled excursion boats" during a cruise onto "navigable streams." Ill. Rev. Stat., ch. 120, ¶¶ 2403(c); Ill. Rev. Stat., ch. 120, ¶¶ 2404(d) and (e) (1991); (Pet. App. 2). In 1999, Illinois' Riverboat Gambling Act was amended to permit a licensed casino owner to conduct riverboat gambling "regardless of whether it conducts excursion cruises." 230 ILCS 10/3(c) (West Supp. 2004). (Pet. App. 2) Shortly thereafter, Players II was moored to the dock and did not cruise again in connection with gaming operations. (Pet. App. 2-3, 112 ¶¶ 3-5) The dockside casino was connected to land-based utilities including water, electric, sewer, telephone, and computer hard-lines. (Pet. App. 3, 13, 112 ¶¶ 7 and 11)

**Players II Served No Transportation Function**

Petitioners assert that the Seventh Circuit's holding is premised on "the vessel owner's subjective intent to remain moored in the future." (Pet. Br. at i, 5) This is untrue. The uncontested evidence of record established that Players never intended Players II to cruise at any time after Illinois law changed to permit dockside gaming. (Pet. App. 2, 13, 112 ¶ 5) But, there is more. In the district court and on appeal to the Seventh Circuit, it was undisputed that, for more than one year before the incident which allegedly caused petitioners' injuries, Players II was *actually* never used to transport passengers, cargo or equipment. (Pet. App. 3, 6, 7, 13, 63, 112 ¶ 3) It was also undisputed that Players II did not leave its dock for any reason other than propulsion testing until it was retired from service as a casino in September 2001 and sold. (Pet. App. 3, 13-14, 112 ¶¶ 2 and 4, 113 ¶ 10)

**The Coast Guard Required Players II To Adhere To Its Formalities Despite Being Indefinitely Moored To Shore**

Players II remained licensed, classified and inspected by the U.S. Coast Guard as a passenger vessel even though it was moored indefinitely. (Pet. App. 3, 112 ¶ 8) The Coast Guard continued to require a marine operations staff so that Players II could be moved if necessary. (Pet. App. 3, 112 ¶ 9) However, after Players II ceased cruising, the Coast Guard authorized a reduction in the number of employees who were required to staff marine operations. (Pet. App. 60, 62)

Following the change in Illinois law which permitted dockside gaming, Players II left the dock only in connection with tests of its propulsion system required by the Coast

Guard. (Pet. App. 3, 113 ¶ 10) The tests took approximately forty-five minutes to complete and required Players II to move away from the dock about 100 feet and then return to the dock. (Pet. App. 3, 64) Petitioners allege that they were injured during the course of their employment in the Players II gaming casino on July 28 and 29, 2000. (Pet. App. 3) By that time, the Coast Guard required the propulsion test only once per year. (Pet. App. 3, 64-65) Players II did not carry passengers during the propulsion tests. (Pet. App. 14, 113 ¶ 10)

**Petitioners' Action Is Unrelated To The Perils Of The Sea**

Petitioners seek to recover against Players under the Jones Act, 46 U.S.C. app. § 688(a) (2000), and the general maritime law for injuries allegedly sustained as a result of being exposed to a chemical product applied to duct work in the casino. (Pet. App. 3, 13)

## REASONS FOR DENYING THE PETITION

### Dockside Casino Employees Are Not Jones Act Seamen Because They Are Not Exposed To The "Perils Of The Sea"

In order to qualify as a "seaman" within the meaning of the Jones Act, 46 U.S.C. app. § 688 (2000), one "must have a substantial employment-related connection to a vessel *in navigation*." *Chandris, Inc. v. Latsis*, 515 U.S. 347, 373 (1995) (citing *McDermott Int'l v. Wilander*, 498 U.S. 337, 354-55 (1991)). Substantial connection to a vessel in navigation is a prerequisite to Jones Act protection because "[t]he Jones Act remedy is reserved for sea-based maritime

employees whose work regularly exposes them to 'the special hazards and disadvantages to which they who go down to the sea in ships are subjected.'" *Chandris, Inc. v. Latsis*, 515 U.S. at 370 (quoting *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104 (1946)). "[T]he inquiry into the nature of the employee's connection to the vessel must concentrate on whether the employee's duties take him to sea." *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 555 (1997). The casino employees here were employed on a craft which had no transportation function, therefore, they did not face the "perils of the sea" and were not seamen within the meaning of the Jones Act, 46 U.S.C. app. § 688 (2000). *Howard v. S. Ill. Riverboat Casino Cruises, Inc.* (Pet. App. 1-8 at 6-7)

The Seventh Circuit's opinion upholds the fundamental principles of the law of seaman status articulated in *Chandris, Inc. v. Latsis*, 515 U.S. 847 (1995) and *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548 (1997). Its holding is pragmatic and sound. As it previously stated in *Johnson v. John F. Beasley Construction Co.*, 742 F.2d 1054, 1063 (7th Cir. 1984), *overruled on other grounds*, *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337 (1991), "in order for a vessel to satisfy the navigation requirement, the purpose of the vessel 'must to some reasonable degree be the transportation of passengers, cargo or equipment from place to place across navigable waters.'" (Pet. App. 6) Looking to Players II's "purpose and actual use (whether it was used to move or transport anything)," the Seventh Circuit properly concluded that "indefinitely moored dockside casinos are not the kind of vessels that the Jones Act addresses is consistent with the statute's purpose of enhancing legal protections for seamen 'regularly' exposed to the 'perils of the sea.'" (Pet. App. 6) (citing *Chandris, Inc. v. Latsis*, 515 U.S. at 369 (1995))

**There Is No Conflict In The Lower Courts: Dockside Casinos That Serve No Transportation Function Are Not "Vessels In Navigation"**

The Fifth Circuit agrees: "[O]nce the [securely moored riverboat casino] was withdrawn from navigation so that transporting passengers, cargo or equipment on navigable water was no longer an important part of the business in which the craft was engaged, the craft was not a vessel [for purposes of the Jones Act]." *Martin v. Boyd Gaming Corp.*, 374 F.3d 375 (5th Cir. 2004); *accord Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560, 570 (5th Cir. 1995).

This Court has long focused on the transportation function served by a craft in determining whether the craft is a vessel. In *The Robert W. Parsons*, 191 U.S. 17 (1903), a horse-drawn canal boat was held to be a vessel. Regardless of its means of propulsion, the canal boat was "engaged in commerce and navigation." *Id.* at 31. By contrast, a floating wharfboat was held not to be a vessel in *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926). About the dockside wharfboat this Court stated:

> It was an aid to river traffic, but it was not used to carry freight from one place to another. It was not practically capable of being used as a means of transportation. It served Evansville as an office, warehouse and wharf, and was not taken from place to place. The connections with the water, electric light, and telephone systems of the city evidence a permanent location. It performed no function that might not have been performed as well by a floating stage or platform permanently

> attached to the land. It did not encounter perils of navigation to which craft used for transportation are exposed.

*Id.* at 22. The same reasoning compelled the Seventh Circuit's holding here:

> Unlike the vessels in navigation that have been the subject of decisions of this court and the Supreme Court, the purpose of *Players II* was not to move or transport cargo or people, but merely to provide a legal venue under Illinois law for gambling.

(Pet. App. 6) *See also Martin v. Boyd Gaming Corp.*, 374 F.3d 375, (5th Cir. 2004) ("[I]t is clear the [dockside casino] had no transportation function in the performance of its function as a gambling casino.").

Like the floating wharfboat in *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926), indefinitely moored floating casinos serve no function that might not be performed as well by a floating dock or platform permanently attached to the land and they do not encounter the "perils of navigation to which craft used for transportation are exposed." *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 22 (1926); (Pet. App. 6) (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 369 (1995)). After 1999, it was immaterial to Illinois lawmakers whether casino gaming was conducted on self-propelled excursion boats which were indefinitely moored to a dock or one or more "permanently moored barges." 230 ILCS 10/4(d) (West Supp. 2004). Whichever structure was used to house a casino, a vessel originally built

to carry passengers or a barge permanently affixed to the shore, the business of an Illinois casino would be the same — to operate gambling games for the entertainment of patrons. The casino workers in both venues would serve the same game-related functions and neither group would face the "perils of the sea." Indeed, the job duties of Illinois casino workers would be no different on a dockside casino then they would be in a casino in Las Vegas.

Contrary to petitioners' suggestion, there is no confusion in the lower courts on the meaning of "vessel in navigation" in cases involving craft which serve no transportation function.[1] (Pet. Br. at 5) There are no "less than uniform

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1. In *Stewart v. Dutra Construction Co.*, 343 F.3d 10 (1st Cir. 2003), *cert. granted*, __ U.S. __, 124 S. Ct. 1414 (Feb. 23, 2004) (No. 03-814), this Court will consider the appropriate standard for determining whether special purpose watercraft are "vessels in navigation" within the meaning of the seaman status test articulated in *Chandris, Inc. v. Latsis*, 515 U.S. 347, 373 (1995). *Stewart v. Dutra Construction Co.* involves injury to an engineer with an employment-related connection to a "SUPER SCOOP" used to dig a trench across Boston Harbor. The SUPER SCOOP was equipped with a clamshell bucket and typically moved once every two hours over navigable waters in connection with its dredging operations. *Stewart v. Dutra Construction Co.*, 343 F.3d at 464. Injury was sustained by the petitioner as a result of a collision between the SUPER SCOOP and one of its attendant scows on navigable waters. *Id.* at 465. *Stewart v. Dutra Construction Co.* will likely resolve the vessel status of craft which serve as floating work platforms while also fulfilling a transportation function to some extent. Granting the Petition for Writ of Certiorari here will promote no advancement in or clarification of the law. There is no authority to support petitioners' position that a dockside structure which serves *no* transportation function may be classified as a vessel in navigation and there is no conflict in the circuits on this issue.

results" in this line of cases. (*Id.*) Like the Fifth and Seventh Circuits, all the courts which have addressed the vessel status of riverboat casinos which are indefinitely moored and will fulfill no transportation function while in service as casinos have ruled that the casinos were not "vessels in navigation." *Howard v. S. Ill. Riverboat Casino Cruises, Inc.* (Pet. App. 1-8); *Martin v. Boyd Gaming Corp.*, 374 F.3d 375 (5th Cir. 2004); *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995); *Hertz v. Treasure Chest Casino, L.L.C.*, 274 F. Supp. 2d 795 (E.D. La. 2003); *McAdow v. Promous Cos.*, 926 F. Supp. 93 (W.D. La. 1996); *Grobe v. Hollywood Casino-Aurora, Inc.*, 759 N.E.2d 154 (Ill. App. Ct. 2001); *Chase v. La. Riverboat Gaming P'ship*, 709 So. 2d 904 (La. Ct. App. 1998); *Rush v. Casino Magic Corp.*, 744 So. 2d 761 (Miss. 1999); *King v. Grand Casinos of Miss., Inc.*, 697 So. 2d 439 (Miss. 1997); *see also Davis v. Players Lake Charles Riverboat, Inc.*, 74 F. Supp. 2d 675 (W.D. La. 1999); c*f. Davis v. Mo. Gaming Co.*, 51 S.W.3d 168 (Mo. Ct. App. 2001) (evidence that, *inter alia*, casino owner dredged navigable channels between casino dock and Missouri River was sufficient to create a genuine issue of material fact as to whether owner intended to resume cruising Coast Guard certified passenger ship); *Greer v. Cont'l Gaming Co.*, 5 S.W.3d 559 (Mo. Ct. App. 1999) (riverboat casino moored for four months during the winter was still "in navigation" because its owners were scheduled to recommence cruising when water levels rose).

**The Rule Of Law Of The Fifth and Seventh Circuits Is Consistent With This Court's Recognition That A Vessel May Be Withdrawn From Navigation**

Petitioners challenge the propriety of the Seventh Circuit's holding here because it recognizes that a "vessel in navigation" must serve some transportation function. Petitioners posit that a craft's historical use and capabilities should govern its status as a "vessel in navigation." This argument was correctly rejected by the Seventh Circuit here and by the Fifth Circuit in *Martin v. Boyd Gaming Corp.*, 374 F.3d 375 (5th Cir. 2004). As the Fifth Circuit aptly stated: "The rule has never been 'once a vessel, always a vessel.'"

The Fifth Circuit first addressed the vessel status of indefinitely moored dockside casinos in *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995). The *Pavone* casino was constructed on a Coast Guard documented barge that was authorized to engage in voyages between all ports in the United States. *Id.* at 564. The barge was also inspected for stability by the American Bureau of Shipping. *Id.* It had a raked bow, bilge pumps, ballast tanks, galleys and an electrical generator. *Id.* The barge was originally constructed to serve as a floating restaurant but was later converted into a casino and towed to Biloxi, Mississippi where it was moored at a dock with sunken steel pylons filled with concrete. *Id.* at 563-64. It was connected to numerous shoreside utility lines. *Id.* at 564. Like Players II, the barge could be disconnected from shore by detaching lines, cables and boarding ramps. *Id.*

The Fifth Circuit found it appropriate to "examine the status of the BILOXI BELLE [casino] as of the times pertinent to the alleged injuries in these cases to determine

if it was a Jones Act vessel." *Id.* at 568. The Fifth Circuit concluded that the barge was not a vessel because:

> The BILOXI BELLE was moored to the shore in a semi-permanent or indefinite manner before, during and after the accidents in question. The BILOXI BELLE is susceptible of being moved, and in fact was moved across navigable waters one time during the course of 'normal operations' (assuming that movant to avoid threat of hurricane on a single occasion can be deemed 'normal operations'), which one-time movant was purely incidental to the barge's primary purpose of physically supporting a dockside casino structure.
>
> We hold, therefore, that at the time of the . . . accidents, the BILOXI BELLE (1) was removed from navigation, and (2) was a work platform. Under either circumstance, it was not then a vessel for purposes of the Jones Act or the general maritime law.

*Id.* at 570; *see also Howard v. S. Ill. Riverboat Casino Cruises, Inc.* (Pet. App. 1-8 ); *Martin v. Boyd Gaming Corp.*, 374 F.3d 375 (5th Cir. 2004); *Hertz v. Treasure Chest Casino, L.L.C.*, 274 F. Supp. 2d 795 (E.D. La. 2003); *McAdow v. Promous Cos.*, 926 F. Supp. 93 (W.D. La. 1996); *King v. Grand Casinos of Miss., Inc.*, 697 So. 2d 439 (Miss. 1997); *Grobe v. Hollywood Casino-Aurora, Inc.*, 759 N.E.2d 154 (Ill. App. Ct. 2001); *Chase v. La. Riverboat Gaming P'ship*, 709 So. 2d 904 (La. Ct. App. 1998); *Rush v. Casino Magic Corp.*, 744 So. 2d 761 (Miss. 1999)

In concluding that the BILOXI BELLE had been "withdrawn from navigation," the Fifth Circuit relied on this Court's opinion in *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187 (1952). Desper was licensed and employed as an operator of motor boats which gave sight-seeing tours on the Illinois River. *Id.* at 188. The vessels were regulated by the Coast Guard. *Id.* In the Fall, the boats were beached and put up on blocks for the winter. *Id.* Desper was killed while performing work in connection with the winter maintenance of the motor boats. *Id.* at 188-89. Although Desper had been engaged to resume his duties as a vessel operator when the boats were put back into the water for the Summer season, it was held that he did not enjoy seaman status at the time of his death. *Id.* at 188, 190-91. This Court found that the vessels had been withdrawn from navigation at the time of Desper's death and that the work Desper was doing at the time of his death was not the work of a "seaman." *Id.* at 190. "'The fact that he had been, or expected in the future to be, a seaman does not render maritime work which is not maritime in its nature.'" *Id.* at 191 (quoting *Antus v. Interocean S.S. Co.*, 108 F.2d 185, 187 (6th Cir. 1939)).

Petitioners would have the vessel status of Players II determined on the basis of its historical use as a passenger carrying vessel, its capability of carrying passengers and the Coast Guard license authorizing it to do so. Their focus on Players II's capability of cruising, however, ignores the undisputed fact that, over one year before they claim to have been injured, the nature of their employment changed from service aboard an excursion riverboat to employment in a shoreside entertainment facility which would never cruise again. As stated in *Chandris, Inc. v. Latsis*, 515 U.S. 347, 372 (1995):

> [w]hen a maritime worker's basic assignment changes, his seaman status may change as well.

> If a maritime employee receives a new work assignment in which his essential duties are changed, he is entitled to have the assessment of the substantiality of his vessel-related work made on the basis of his activities in his new position.

On the basis of the nature of their employment at the time of their alleged injury, petitioners were not entitled to seaman status.

Petitioners are wrong to rely on *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995) and *Senko v. LaCrosse Dredging Co.*, 352 U.S. 370 (1957) to challenge the Fifth and Seventh Circuit holdings that indefinitely moored dockside casinos such as Players II and BILOXI BELLE have been "withdrawn from navigation." *Chandris, Inc. v. Latsis*, observed that "it is generally accepted that 'a vessel does not cease to be a vessel when she is not voyaging, but is at anchor, berthed, or at dockside.'" 515 U.S. at 373 (quoting *DiGiovanni v. Traylor Bros., Inc.*, 959 F.2d 1119, 1121 (1st Cir. 1992) (*en banc*), *cert. denied*, 506 U.S. 827 (1992)). This Court further commented:

> '[e]ven a transoceanic liner may be confined to berth for lengthy periods, and while there, the ship is kept in repair by its crew' — and . . . [t]here can be no doubt that a member of its crew would be covered by the Jones Act during this period, even though the ship was never in transit during his employment.'

*Id.* at 375 (quoting *Senko v. LaCrosse Dredging Corp.*, 352 U.S. 370, 373 (1957)) (injured employee was not deprived of seaman status because the dredge to which he was assigned

was anchored to shore at all times he worked on it given that the dredge was occasionally in transit and the primary purpose of the employee's work was to maintain the dredge "for its future trips, and . . . he would have significant navigational function when the dredge was put in transit." 352 U.S. at 373-74) The facts in *Chandris, Inc. v. Latsis*, and *Senko v. LaCrosse Dredging Corp.*, however, are simply not comparable to actions involving indefinitely moored casinos and the cases are not controlling.

The indefinitely moored casinos at issue in *Martin v. Boyd Gaming Corp.*, 347 F.3d 375 (5th Cir. 2004), *Pavone v. Miss. Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995) and the case at bar were not merely "docked or anchored at the moment of injury." (Pet. App. 7-8 (citing *Johnson v. John F. Beasley Constr. Co.*, 342 F.2d 1054, 1063-64 (7th Cir. 1984), *overruled on other grounds*, *McDermott International, Inc. v. Wilander*, 498 U.S. 337 (1991))). The casinos were kept in fully functional condition and licensed by the Coast Guard, but this was not done to keep them ready for future trips. Once the casinos "went dockside" as permitted by law, no future trips were contemplated or made in furtherance of casino business. These facts distinguish the dockside casinos which have been held by the Fifth and Seventh Circuits to have been "withdrawn from navigation" from the transoceanic liner discussed in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995) or the dredge in *Senko v. LaCrosse Dredging Corp.*, 352 U.S. 370, 373 (1957), both of which would return to their customary service as a means of waterborne transportation after a period of maintenance or repair. The point must be reiterated: Players II had not served a transportation function for more than a year before petitioners' alleged injury and it would never do so again while serving as a casino.

The federal and state courts have correctly reasoned that casino employees are not entitled to the protection of the Jones Act, 46 U.S.C. app. § 688 (2000), once the casinos withdraw from navigation by becoming indefinitely moored to a dock and ceasing all transportation functions.

**The Proposition That A "Vessel" Is A Structure Which Supports Commerce Of Any Kind Offends Well Established Principles of Admiralty Law**

*Johnson v. John F. Beasley Construction Co.*, 742 F.2d 1054, 1063-64 (7th Cir. 1984), stated that "in navigation" does not mean only the "actual navigating or movement of the vessel, but instead means that the vessel is engaged as an instrument of commerce or transportation on navigable waters." Petitioners seize upon this statement as authority for the proposition that the Seventh Circuit ignored its own precedent when it held that a dockside structure that serves no transportation function is not a "vessel in navigation." (Pet. Br. at 9) Petitioners urge that a "vessel in navigation" for the purposes of seaman status under the Jones Act, 46 U.S.C. § 688(a) (2000), should be any floating structure that "makes money whether or not it moves passengers or goods." (*Id.*) This proposition conflicts directly with the Seventh Circuit's view that a vessel in navigation must transport something over water. *Johnson v John F. Beasley Constr. Co.*, 742 F.2d 1054, 1063 (7th Cir. 1984), *overruled on other grounds, McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337 (1991) It also conflicts with the Fifth Circuit's view that transportation, rather than the mere ability to float on water, is the key factor in determining vessel status *Martin v. Boyd Gaming Corp.*, 374 F.3d 375 (5th Cir. 2004); *see also Pavone v. Miss. Riverboat Amusement Corp.* 52 F.3d 560, 569-70 (5th Cir. 1995).

Recognizing floating structures that house any type of commercial enterprise as vessels "in navigation" would contravene the very principles on which admiralty jurisdiction is founded. *See St. Paul Fire & Marine Ins. Co. v. Gulfside Casino P'ship*, 2001 A.M.C. 143 (S.D. Miss. 2001) (permanently moored floating casino is not a vessel, therefore, contracts of insurance providing coverage to the casino are not maritime contracts and not within admiralty jurisdiction). "Commerce for the purpose of admiralty jurisdiction means activities related to the business of shipping." *Adams v. Mont. Power Co.*, 528 F.2d 437, 439 (9th Cir. 1975) (citing *George v. Beavark, Inc.*, 402 F.2d 977 (8th Cir. 1968)). "The primary purpose of federal admiralty jurisdiction is to 'protect commercial shipping' with 'uniform rules of conduct.'" *Leblanc v. Cleveland*, 198 F.3d 353, 356 (2d Cir. 1999) (quoting *Sisson v. Ruby*, 497 U.S. 358, 362 (1990)); *see also Adams*, 528 F.2d at 439; *Terra Nova Ins. Co. v. Acer Latin America, Inc.*, 931 F. Supp. 852, 855 (S.D. Fla. 1996) ("admiralty jurisdiction was created . . . to adjudicate rights and liabilities as they related to the trafficking of seafaring vessels" (quoting *Atlantic Mut. Ins. Co. v. Balfour Maclaine Int'l*, 968 F.2d 196, 199-200 (2d Cir. 1992))).

Admiralty jurisdiction in a tort case requires not only that the tort occur on navigable water but that the incident giving rise to the injury have some significant relationship to traditional maritime activity. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995); *Executive Jet Aviation v. Cleveland*, 409 U.S. 249, 268 (1972); *Weaver v. Hollywood Casino - Aurora, Inc.*, 255 F.3d 379, 382 (7th Cir. 2001). Not even Plaintiffs contend that casino gaming has any relationship to traditional maritime activity. Admiralty law provides no support for the notion that a structure can be deemed a "vessel in navigation" merely because some dockside business is operated on it.

## CONCLUSION

This Court has made it clear that "[t]he Jones Act remedy is reserved for sea-based maritime employees whose work regularly exposes them to 'the special hazards and disadvantages to which they who go down to the sea in ships are subjected.'" *Chandris, Inc. v. Latsis*, 515 U.S. 347, 370 (1995) (quoting *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104 (1946)). A seaman must have duties that "take him to sea." *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 555 (1997). Indefinitely moored casinos that serve no transportation function do not take casino employees to sea. The federal and state courts which have addressed that vessel status of such structures, including that Fifth and Seventh Circuits, have unwaveringly held that they are not "vessels in navigation" for purposes of the seaman status test articulated by this Court in *Chandris, Inc. v. Latsis*. Those courts have found no justification for removing actions involving injury to dockside casino workers from the purview of state workers' compensation schemes given that their employment does not expose them to the "perils of the sea." Review of those decisions is unwarranted.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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